



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : CHI/29UQ/LDC/2024/0031

**Property** : Sandringham Mews, 10-12 Woodbury Park Road, Tunbridge Wells, TN4 9JZ.

**Applicant** : WPR Management Co Limited

**Representative** : Alexandre Boyes

**Respondent** : Mr B Pett – Flat 1  
Mrs M O Collins – Flat 2  
Mr & Mrs J Keefe – Flats 3&4  
Ms J L Veness – Flat 5  
Mr J & Mrs H Harris – Flat 6

**Representative** :

**Type of Application** : To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985

**Tribunal Member** : Judge N Jutton

**Date of Determination** : 15 May 2024

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**DECISION**

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## **Summary of the Decision**

1. **The Applicant is granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements in respect of works to repair the roof at the Property.**

## **The application and the history of the case**

2. The Applicant applies for dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.
3. The Applicant seeks dispensation from consultation in respect of works to repair the roof at the Property. The Applicant says that the works will be to strip from the roof the ridge tiles, 3 - 4 hips on either side and the top third of the roof tiles together with all battening. To then install new battening, relay the tiles, reinstall the hips and ridge on a strong mortar bed and point. The work will require scaffolding. The Applicant says that the cost of the scaffolding will be £950, the cost of materials £280 and total labour costs of £1680 a total of £2910 ('The Works').
4. The Tribunal gave Directions on 28 February 2024, explaining that the only issue for the Tribunal is whether, or not, it is reasonable to dispense with the statutory consultation requirements and not the question of whether any service charge costs are reasonable or payable.
5. The Directions provided that any party who objected should complete a pro forma which was attached to the same. A response was received from the lessee of flat 1 Mr Bernard Pett consenting to the application. No other responses were received.

## **The Law**

6. Section 20 of the Landlord and Tenant Act 1985 ("the Act") and the related Regulations provide that where the lessor intends to undertake major works with a cost of more than £250 per lease in any one service charge year the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.
7. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation "if satisfied that it is reasonable to dispense with the requirements".

8. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14.
9. The leading judgment of Lord Neuberger explained that a tribunal should focus on the question of whether the lessee will be or had been prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were “a means to an end, not an end in themselves”.
10. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessee(s).
11. Where the extent, quality and cost of the works were in no way affected by the lessor’s failure to comply, Lord Neuberger said as follows:

“I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be- i.e. as if the requirements had been complied with.”
12. The “main, indeed normally, the sole question”, as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the Lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.
13. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.
14. If dispensation is granted, that may be on terms.
15. The effect of *Daejan* has been considered by the Upper Tribunal in *Aster Communities v Kerry Chapman and Others* [2020] UKUT 177 (LC), although that decision primarily dealt with the imposition of conditions when granting dispensation and that the ability of lessees to challenge the reasonableness of service charges claimed was not an answer to an argument of prejudice arising from a failure to consult.

## **Decision**

16. The Applicant explains that the Property is a purpose built block of six residential apartments set across three floors. That the Applicant noticed that tiles began slipping on the roof. The Applicant instructed a

roofer to inspect the roof. The roofer advised that the battening holding the tiles had started to slide and that fixings were coming away causing tiles to slip and to 'kick up'. The works which the Applicant states are required involved stripping the ridge tiles, 3 - 4 hips on either side and the top third of the tiles together with all battening. To then install new battening and to relay the tiles. The Applicant is concerned that if there is delay in carrying out the works whilst a consultation process is undertaken that there is a risk of injury to persons and of water ingress into the Property.

17. No leaseholder has objected to the application.
18. In my judgment it is just and equitable to grant dispensation to the Applicant for the Works to be undertaken. That further cost and damage to the Property may be occasioned if the Works are delayed pending the completion of a consultation process. That such delay may occasion unnecessary risk of harm to persons caused by falling tiles. I am satisfied that consultation should be dispensed with.
19. In reaching my decision I have taken account of the fact that no party has objected to the application. The leaseholders have had opportunity to raise any objection and they have not done so. I do however direct that the dispensation is conditional upon the Applicant or their agent sending a copy of this decision to all the leaseholders so that they are aware of the same.
20. For completeness I confirm that this decision is confined to a determination of the issue of dispensation from the consultation requirements in respect of the Works. The Tribunal has made no determination on whether the cost of the Works are payable as a service charge or are reasonable. If a lessee wishes to challenge the payability or reasonableness of those costs as service charges, including the possible application or effect of the Building Safety Act 2022, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.

## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) being the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

